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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/802,154

03/16/2004

Mick Pauli

P0321

3937

7590

06/13/2006

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EXAMINER

BUI, LUAN KIM

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/802,154

Applicant(s)

PAULI, MICK

Examiner

Luan K. Bui

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3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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As a point of clarification, the instant application was filed with 12 claims. However, there is no claim 10. Therefore, claim 11 has been renumbered to claim 10 and claim 12 has been renumbered to claim 11.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 1-5, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Leonard (5,433,324). Leonard discloses a device/anti-tip device (10, 30) for medicament bottles/vials comprising a base member (14) adapted and constructed to be selectively secured to the bottom of the vial (70) and the base member having a shape extends outwardly from the vial when the base member is secured to the bottom of the vial. As the claim 2, the base member is generally annular. As to claims 4-5, the base member has a generally rounded cross-sectional outer contour which is considered equivalent to a generally angular cross-sectional outer contour. As to claims 8 and 9, the base member formed from a unitary piece (the bottom piece 11, Figure 5) and the base member comprises indicia (26).

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3. Claims 1-5 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Jeter (6,793,075). Jeter discloses a device/anti-tip device (22) for a drinking container comprising a base member (22) adapted and constructed to be selectively secured to the bottom of the container (10) and the base member having a shape extends outwardly from the vial when the base member is secured to the bottom of the container. The device of Jeter is inherently capable for holding medicament vials. As the claim 2, the base member is generally annular. As to claims 4-5, the base member has a generally rounded cross-sectional outer contour which is considered equivalent to a generally angular cross-sectional outer contour. As to claim 9, the base member formed from a unitary piece.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leonard (5,433,324) or Jeter (6,793,075) in view of Marsh (3,788,511). Leonard or Jeter discloses the device as above having all the limitations of the claims except for the base member comprises a plurality of circumferential indents on the outer periphery. Marsh shows a protective jacket having a plurality of circumferential indents (between numerals 44, 46). It would have been obvious to one having ordinary skill in the art in view of Marsh to modify the base member of

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either Leonard or Jeter so the base member includes a plurality of circumferential indents to facilitate gripping.

6. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leonard (5,433,324) or Jeter (6,793,075) in view of Clingman (3,831,209). Leonard or Jeter discloses the device as above having all the limitations of the claims except for the base member being formed from an elastomeric material or polystyrene. Clingman teaches a base member (10) formed from a polystyrene material. It would have been obvious to one having ordinary skill in the art in view of Clingman to modify the base member of either Leonard or Jeter so the base member is made from a polystyrene material or any other materials such as an elastomeric material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
June 8, 2006



Luan K. Bui
Primary Examiner
Art Unit 3728